

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ERIC CLYDE BALL,

Plaintiff,

Case No. 1:07-cv-1095

v

HON. JANET T. NEFF

JOHN R. HOLMES,

Defendant.

JUDGMENT

On October 31, 2007, plaintiff, a state prisoner, filed a “Petition for Declaratory Judgment and Injunction Regarding Probable Cause Determination,” which was docketed as his Complaint in this action. On November 15, 2007, plaintiff filed a “Petition for a *Gerstein* Hearing Pursuant to *Gerstein v. Pugh*, 420 U.S. 103; 85 S. Ct. 854 (1974),” which was docketed as his Amended Complaint. In the Amended Complaint, plaintiff sought a declaratory judgment and injunction to determine probable cause violations.

On November 29, 2007, the Magistrate Judge filed a Report and Recommendation, recommending that plaintiff’s action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915A(b) for failure to state a claim. The Magistrate Judge concluded that the only remedy for plaintiff’s challenge to the circumstances of his state-court conviction is an application for habeas corpus relief.

The matter is presently before the Court on plaintiff’s December 10, 2007 objection to the

Report and Recommendation.¹ In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which plaintiff has made his objection. Plaintiff asserts that the Magistrate Judge neglected to consider his Amended Complaint, but there is no indication that the Magistrate Judge overlooked the claims in plaintiff's Amended Complaint in making his recommendation of dismissal. Accordingly, the Court denies plaintiff's objection.

For these reasons, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. See *McGore v. Wrigglesworth*, 114 F.3d 601, 610-11 (6th Cir. 1997).

THEREFORE, IT IS ORDERED that the objection (Dkt 6) is DENIED and the Report and Recommendation (Dkt 5) is APPROVED and ADOPTED as the opinion of the Court.

IT IS FURTHER ORDERED that the Complaint (Dkt 1) is DISMISSED pursuant to 28 U.S.C. § 1915A(b) for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that the Court certifies pursuant to 28 U.S.C § 1915(a) that an appeal of the Judgment would not be taken in good faith.

Date: August 27, 2008

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

¹ This matter was originally assigned to the Honorable Robert Holmes Bell but was subsequently transferred to the undersigned pursuant to Administrative Order No. 08-027, filed March 6, 2008.